

ROBERT E. BELSHAW (SBN 142028)
OF COUNSEL
GUTIERREZ & ASSOCIATES
244 California St. Ste. 300
San Francisco, California 94111
Telephone: (415) 956-9590
Facsimile: (415) 986-8606

Attorneys for Plaintiff
American Small Business League

MELINDA HAAG (SBN 132612)
United States Attorney
JOANN M. SWANSON (SBN 88143)
Chief, Civil Division
NEILL T. TSENG (SBN 220348)
Assistant United States Attorney

450 Golden Gate Avenue, 9th Floor
San Francisco, California 94102-3495
Telephone: (415) 436-7155
Facsimile: (415) 436-6927
Email: neill.tseng@usdoj.gov

Attorneys for Defendant
UNITED STATES DEPARTMENT OF THE ARMY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AMERICAN SMALL BUSINESS LEAGUE,)	No. C 11-0955 EMC
)	
Plaintiff,)	STIPULATION AND [PROPOSED]
)	ORDER RE SETTLEMENT AND
v.)	DISMISSAL WITH PREJUDICE
)	
UNITED STATES DEPARTMENT OF THE ARMY,)	
)	
Defendant.)	

Plaintiff AMERICAN SMALL BUSINESS LEAGUE (“Plaintiff”) and Defendant UNITED STATES DEPARTMENT OF THE ARMY (“Defendant”), by and through their undersigned counsel, hereby enter into this Stipulation and [Proposed] Order Re Settlement and Dismissal With Prejudice (the “Stipulation”) as follows:

1 1. Defendant shall pay to Plaintiff the amount of one thousand four hundred forty-
2 four U.S. dollars and zero cents (\$1,444.00) in full and complete satisfaction of Plaintiff's claims
3 for attorneys' fees, costs, and litigation expenses under the Freedom of Information Act
4 ("FOIA") in the above-captioned matter. This payment shall constitute full and final satisfaction
5 of any and all of Plaintiff's claims for attorneys' fees, costs, and litigation expenses in the above-
6 captioned matter, and is inclusive of any interest. Payment of this money will be made by
7 electronic funds transfer, and Plaintiff's counsel will provide the necessary information to
8 Defendant's counsel to effectuate the transfer. Defendant will make all reasonable efforts to
9 make payment within thirty (30) days of the date that Plaintiff's counsel provides the necessary
10 information for the electronic funds transfer and this Stipulation is approved by the Court,
11 whichever is later, but cannot guarantee payment within that timeframe.

12 2. Upon the execution of this Stipulation, Plaintiff hereby releases and forever
13 discharges Defendant, its successors, the United States of America, and any department, agency,
14 or establishment of the United States, and any officers, employees, agents, successors, or assigns
15 of such department, agency, or establishment, from any and all claims and causes of action that
16 Plaintiff asserts or could have asserted in this litigation, or which hereafter could be asserted by
17 reason of, or with respect to, or in connection with, or which arise out of, the FOIA request on
18 which this action is based or any other matter alleged in the Complaint, including but not limited
19 to all past, present, or future claims for attorneys' fees, costs, or litigation expenses in connection
20 with the above-captioned litigation.

21 3. The provisions of California Civil Code Section 1542 are set forth below:

22 "A general release does not extend to claims which the creditor does not know or
23 suspect to exist in his favor at the time of executing the release, which if known
24 by him must have materially affected his settlement with the debtor."

24 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by its
25 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and
26 all rights it may have pursuant to the provision of that statute and any similar provision of federal
27 law. Plaintiff understands that, if the facts concerning any injuries, liability for damages
28 pertaining thereto, or liability for attorneys' fees, costs or litigation expenses are found hereafter

1 to be other than or different than the facts now believed by it to be true, the Stipulation shall be
2 and remain effective notwithstanding such material difference.

3 4. Execution of this Stipulation and its approval by the Court shall constitute
4 dismissal of this case with prejudice pursuant to Fed. R. Civ. P. 41(a).

5 5. The parties acknowledge that this Stipulation is entered into solely for the
6 purpose of settling and compromising any remaining claims in this action without further
7 litigation, and it shall not be construed as evidence or as an admission on the part of Defendant,
8 the United States, its agents, servants, or employees regarding any issue of law or fact, or
9 regarding the truth or validity of any allegation or claim raised in this action, or as evidence or as
10 an admission by the Defendant regarding Plaintiff's entitlement to attorneys' fees or other
11 litigation costs under FOIA. This Stipulation shall not be used in any manner to establish
12 liability for fees, amounts, or hourly rates in any other case or proceeding involving Defendant.

13 6. This Stipulation is binding upon and inures to the benefit of the parties hereto and
14 their respective successors and assigns.

15 7. If any provision of this Stipulation shall be held invalid, illegal, or unenforceable,
16 the validity, legality, and enforceability of the remaining provisions shall not in any way be
17 affected or impaired thereby.

18 8. This Stipulation shall constitute the entire agreement between the parties, and it is
19 expressly understood and agreed that this Stipulation has been freely and voluntarily entered into
20 by the parties hereto. The parties further acknowledge that no warranties or representations have
21 been made on any subject other than as set forth in this Stipulation.

22 9. The persons signing this Stipulation warrant and represent that they possess full
23 authority to bind the persons on whose behalf they are signing to the terms of the Stipulation.

24 10. This Stipulation may not be altered, modified or otherwise changed in any
25 respect except in writing, duly executed by all of the parties or their authorized representatives.

26 //

27 //

28 //

11. This Stipulation may be executed in counterparts and is effective on the date by which both parties' counsel have executed the Stipulation.

SO STIPULATED AND AGREED.

DATED: May 18, 2011

By: /s/
ROBERT E. BELSHAW
Attorney for Plaintiff

MELINDA HAAG
United States Attorney

DATED: May 18, 2011

By: /s/
NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: 5/24/11

HONORABLE
UNITED STATES

